

**E-Filing Policy Issue - # 13**  
(Documents & Cases Sealed after Filing)

**Issue:** (State the issue and whether it is specific to a certain level of court or case type.)

How should documents or cases which are sealed by the court after filing, be displayed or identified in AZTurboCourt's central document repository and on the electronic case docket sheet?

**Discussion:** (Provide the factual setting or context for the issue.)

Supreme Court Rule 123 precludes online access/display of sealed documents. However, the AOC E-filing team is seeking direction on how sealed documents or cases should be identified to the public in the AZTurboCourt system.

**Authorities:** (Provide references to specific statutes, rules, codes or administrative orders you believe are pertinent to the issue.)

Supreme Court Rule 123 governs online access/display of sealed documents as follows:

**Rules of the Supreme Court of Arizona**

**XII. Miscellaneous Provisions**

**Rule 123. Public Access to the Judicial Records of the State of Arizona**

**(g) Remote Electronic Access to Case Records.**

(1) A court may provide remote electronic access to case records as follows:

(A) *Parties, Attorneys, and Arbitrators.* Parties, attorneys, and arbitrators may be provided remote electronic access, upon registering, to case records which are not sealed in all case types in which the person is an attorney of record, arbitrator, or named party, including an individual, partnership, corporation, association, or public or private organization. An attorney of record on the staff of a public or private law firm may extend access to any other attorney or person working for or on behalf of that public or private law firm, upon the other attorney's or person's registration.

(B) *Governmental Entities and Public Purpose Organizations.* Any federal, state, tribal, or local governmental entity or public purpose organization may be provided remote electronic access to any case records necessary to carry out a particular governmental or public purpose responsibility. The terms of such access shall be set forth in a memorandum of understanding between the entity or organization and the custodian that includes provisions for safeguarding the confidentiality of any closed records.

(C) *General Public, Registered Users.*

(i) Members of the public who hold an Arizona driver license or nonoperating identification license may be provided remote electronic access, upon registering and paying any established fee, to all of the following categories of case records unless sealed or otherwise made confidential by rule or law:

Many court rules reference sealing of documents. A representative sample of these rules is set forth below.

## **Rules of Civil Procedure for the Superior Courts of Arizona**

### **V. Depositions and Discovery**

#### **Rule 26. General Provisions Governing Discovery**

##### **Rule 26(c). Protective Orders**

(1) Subject to paragraph (2) of this rule, upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the county where the deposition is to be taken, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

## **Rules of Criminal Procedure**

### **IV. Pretrial Procedures**

#### **Rule 15. Disclosure**

##### **Rule 15.5. Excision and protective orders**

**d. Preservation of Record.** If the court enters an order that any material, or any portion thereof, is not subject to disclosure under this rule, the entire text of the material shall be sealed and preserved in the record to be made available to the appellate court in the event of an appeal.

## **Rules of Family Law Procedure**

### **I. General Administration**

### **Rule 3. Definitions**

9. *Sealing*. If the court orders that a paper or electronic record or portion of a record is to be sealed, the record or portion of the record shall be sealed by the Clerk of the Court, and the record or portion of the record shall be accessible or disclosed only to those persons designated by order of the court. This definition is not intended to affect the substantive rights of any party.

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The Federal Courts recently resolved to handle the identification of sealed cases as follows:

From: *The Third Branch: Newsletter of the Federal Courts*, March 2009, Vol. 41, No. 3

PACER to List “Sealed vs. Sealed” Cases

The Judicial Conference, in its continuing efforts to ensure appropriate public access to court files, has voted to make federal court sealed cases more readily apparent.

The Conference, acting at its March 17 meeting, voted to have Internet lists of civil and criminal cases in district courts include a case number and generic name, such as “Sealed vs. Sealed,” for each sealed case.

Such lists for each of the 94 district courts are generated by the Judiciary’s Case Management/Electronic Case Files system and are accessible through the Public Access to Court Electronic Records (PACER) system.

Currently, PACER lists of sequentially numbered district court cases skip the sealed cases, but a member of the public could query the missing case number directly and would see a message stating that the case “is under seal.”

The Conference in 2007 strongly encouraged district courts to change the message that PACER users receive when querying a sealed case—from “this case does not exist” to “this case is under seal.” The latest Conference action is consistent with and further implements the 2007 Conference policy by providing the public with information to confirm the existence of a sealed case.

The Conference left it up to the individual district courts to determine what additional information about sealed cases, such as the initials of the assigned judge or the date of filing, should be available to the public.

NOTE: ACJA § 1-506 provides: “Courts shall not accept electronically filed confidential and sealed documents.”

**Alternative Solutions:** (List all identified alternative solutions for the issue.)

- Eliminate all reference to a sealed case from the central document repository
  - Identify a sealed case in the central document repository by case no., the case name of “Sealed v. Sealed,” and provide the phrase “this case is under seal.”
- Identify a sealed document on the electronic docket sheet by name/title, with the word “sealed” after the name/title.
  - Substitute the name/title of the sealed document on the electronic docket sheet with the word “sealed.”

**Position/Recommendation:** (Does the AOC E-filing team have a recommendation on this issue?)

The AOC E-filing team recommends:

- That sealed documents or cases only be available for viewing by those persons permitted to view them under current rule and law or pursuant to court order.
- That, upon an order to seal an existing document or case, all copies of that document or case under the court’s control become sealed in a real-time manner.
- That the identification of sealed cases in the central document repository follow federal practice set forth above.
- That sealed documents be displayed on the electronic case docket sheet as “Case # (SEALED).”

**Decision:**

In the initial statewide e-filing implementation, sealed cases must have only their case number and the word “sealed” displayed on screen for parties and counsel in AZTurboCourt.